

**REMARKS**

Applicant has carefully considered the matters raised by the Examiner in the outstanding Office Action but remains of the position that patentable subject matter is present. Applicant respectfully requests reconsideration of the Examiner's position based on the attached Declaration, the amendments to the specification, the amendments to the claims and the following remarks.

The present invention is directed to a one-part photographic developing concentrate that exhibits improved fluctuation of oxidation-reduction potential after storage at high temperatures and that exhibits reduced variation in gamma balance when used as a replenisher after storage.

Applicant has amended claim 1 to recite the limitations of claim 3, namely a compound of Formulas (A-I)-(A-IV) is contained in the concentrate. Claim 3 has accordingly been cancelled. Applicant has also added new claims 9-11. Claims 9-11 mirror claims 1, 3 and 4, however, claim 9 positively recites the presence of sodium ions, potassium ions, sulfate ions and carbonate ions. Applicant has additionally amended Formula (A-II) of claim

1 and page 9 of the Application to correct a minor typographical error. Group "A<sub>21</sub>" had been listed as two substituents, rather than "A<sub>21</sub>" and "A<sub>22</sub>". Support for this amendment can be found in the paragraph immediately following Formula (A-II) on page 9 and claim 1.

A restriction had been put forward between the concentrate, claims 1-4, and the method, claims 5-8. An election was made to the concentrate, claims 1-4, and claims 5-8 had been withdrawn. Applicant confirms the election to the concentrate, claims 1-4.

Because of the amendments made to the claims and the election, claims 1, 2 and 4-11 are pending in this Application. Claims 1, 2 4 and 9-11 are under prosecution and claims 5-8 are withdrawn from consideration.

Claims 1-4 had been rejected as being unpatentable over Tappe. Tappe teaches a developing concentrate containing a paraphenylene diamine color developing agent (CD-3) and a water soluble organic solvent (diethylene glycol), see Example 4. The Examiner had stated that the Examples of Tappe inherently teach the specific molar ratios of claim 1. Applicant disagrees.

First, Tappe does not specifically teach the molar ratios of the present invention. Second, a Declaration is enclosed to demonstrate that Tappe does not inherently teach the molar ratios of the present invention, and third, the Declaration demonstrates that the present invention provides a superior developing concentrate compared to the developing concentrate of Tappe. Specifically, the Declaration demonstrates that the developing concentrate of the present invention, containing a compound of Formulas (A-I)-(A-IV), exhibits superior variation of oxidation-reduction potential and superior variation of gamma balance compared to the developing concentrate of Tappe, containing no compound of Formulas (A-I)-(A-IV).

As noted above, Tappe does not specifically teach a concentrate where the molar ratio of sodium to potassium ions is at least 3 nor does Tappe teach that the molar ratio of sulfate ions to carbonate ions is more than 0.25.

It appears that the Examiner agrees with this point, but has pointed to Example 4 on the auspices that Tappe inherently teaches that the sodium to potassium ion molar ratio and the sulfate to carbonate ion molar ratio is

within the claimed limitation. In order to show that Tappe does not inherently teach these molar ratios, a Declaration is submitted herewith.

In the Declaration, Applicant prepared and evaluated the developing concentrates of Examples 1-10 of Tappe to determine the molar ratio of sodium ions to potassium ions and the molar ratios of sulfate ions to carbonate ions. The results of these evaluations are illustrated in Table A of the Declaration. Table A demonstrates that Example 3 and Example 4 of Tappe are the only developing concentrates that have molar ratios within the range of claim 1, and are therefore considered by Applicant to be the closest developing concentrates to the present invention. Albeit that the only reason that Example 3 and Example 4 meet the claimed ratio is because of no potassium ion in the concentrate, thus the ratio is infinity.

As shown in Table A, Tappe does not inherently teach the molar ratios of the present invention because a number of the Examples do not have the claimed molar ratios of the sodium to potassium ions or the sulfate to carbonate ions.

The developing concentrates of Example 3 and Example 4 of Tappe differ from the developing concentrates of the present invention because Example 3 of Tappe employs polymaleic acid as the chelating agent, while Example 4 of Tappe employs EDTA as the chelating agent. In contrast to Tappe, the present invention employs compounds of Formulas (A-I)-(A-IV) as the chelating agent. In order to demonstrate the criticality of this difference, Applicant evaluated the developing concentrates of Examples 1-10 of Tappe to show that the developing concentrate of the present invention exhibits superior variation of oxidation-reduction potential and superior variation of gamma balance compared to the developing concentrates of Examples 1-10 of Tappe.

Table B of the Declaration shows the variation of oxidation-reduction potential and variation of gamma balance for Examples 1-10 of Tappe. Table 2 of the Application shows the variation of oxidation-reduction potential and variation of gamma balance for developing concentrates of the present invention containing a compound of Formulas (A-I)-(A-IV).

A comparison of Table B of the Declaration and Table 2 of the Application demonstrates that a superior developing concentrate is obtained by employing a compound of Formulas (A-I)-(A-IV). Specifically, Table 2 demonstrates that developing concentrates 2-5 to 2-12 exhibit a variation of oxidation-reduction potential of between 6.2 to 7.9, and exhibit a variation of gamma balance of between 6.9 and 7.9. In contrast to developing concentrates 2-5 to 2-12 of the present invention, Example 3 and Example 4 of Tappe exhibit a greater variation of oxidation-reduction potential, namely 8.7 and 9.0, and exhibit a greater variation of gamma balance, namely 9.2 and 9.4. Thus, the developing concentrates of the present invention, containing a compound of Formulas (A-I)-(A-IV), are superior to the developing concentrates of Tappe because the developing concentrates of the present invention, containing a compound of Formulas (A-I)-(A-IV), exhibit lower variations of oxidation-reduction potential and lower variations of gamma balance.

In light of the attached Declaration, Applicant submits that claims 1, 2 and 4 are patentable over Tappe, since Tappe does not teach the use of a compound of Formulas (A-I)-(A-IV) as the chelating agent.

Applicant has added new claims 9-11 in order to further define the present invention. Claim 9-11 substantially mirror claims 1, 3 and 4, however, claim 9 positively recites that sodium ions, potassium ions, sulfate ions and carbonate ions are present in the developing concentrate.

Applicant submits that claims 9-11 are patentable over Tappe, because the developing concentrates of Tappe do not contain potassium ions while simultaneously satisfying the range of claim 9.

As explained above, Examples 3 and 4 of Tappe satisfy the claimed molar ratio limitations only because no potassium ions are present. Table A of the Declaration demonstrates that Example 3 and Example 4 of Tappe have a Na/K ratio of infinity because no potassium ions are present in the concentrate. Thus, claim 9 is not taught by Tappe, since Tappe does not teach a developing concentrate that satisfies the claimed molar ratio limitation while simultaneously containing potassium ions. Applicant therefore submits that claims 9-11 are patentable over Tappe.

In view of the foregoing and the enclosed, it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested. Should any extensions of time or fees be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit Account # 02-2275.

Respectfully submitted,

MUSERLIAN, LUCAS AND MERCANTI, LLP

By: Donald C. Lucas  
Donald C. Lucas, 31,275  
Attorney for Applicant(s)  
475 Park Avenue South  
New York, New York  
Tel. # 212-661-8000

Encl: Executed Declaration of Wataru Satake  
Return receipt postcard